

Railroad Retirement Board

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from his or her employer to compensate for wages lost during the period of absence, the employer must, by way of adjustment provided for in § 209.9 of this part, report the compensation with respect to the year in which the time and compensation were lost.

(c) *Separation allowance or severance pay.* A separation allowance or severance payment shall be reported in accordance with § 209.14 of this part.

(d) *Miscellaneous pay.* Miscellaneous pay, as defined in § 211.11 of this chapter, shall be reported in the year paid and reported on the annual report of compensation as provided for in § 209.8 of this part.

(e) *Vacation pay.* Vacation pay may be reported in accordance with this section except that any payments made in the year following the year in which the employee resigns or is discharged shall be reported by way of adjustment under § 209.9 of this part as paid in the year of resignation or discharge.

[58 FR 45250, Aug. 27, 1993, as amended at 63 FR 32614, June 15, 1998]

§ 209.16 Disposal of payroll records.

Employers may dispose of payroll records for periods subsequent to 1936, *provided that* the payroll records are more than five years old and that there is no dispute pending pertaining to the compensation reported for the period of those records.

[61 FR 31395, June 20, 1996]

§ 209.17 Use of payroll records as returns of compensation.

Payroll records of employers which have permanently ceased operations may be accepted in lieu of prescribed reports *provided that* there is no official of the employer available to prepare and certify to the accuracy of such reports and, *provided further that* any employer and employee tax liability incurred under the Railroad Retirement Tax Act has been discharged.

[61 FR 31395, June 20, 1996]

PART 210—CREDITABLE RAILROAD SERVICE

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AUTHORITY: 45 U.S.C. 231f.

§ 210.1 General.

An individual's entitlement to benefits and the amount of benefits payable under the Railroad Retirement Act are determined based, in part, on the individual's years of service. This part defines what the term service means under the Railroad Retirement Act and sets forth what types of service are creditable under that Act.

[49 FR 46731, Nov. 28, 1984]

§ 210.2 Definition of service.

Service means a period of time for which an employee receives payment from a railroad employer for the performance of work; or a period of time for which an employee receives compensation which is paid for time lost as an employee; or a period of time credited to an employee for creditable military service as defined in part 212 of this chapter. Service shall also include deemed months of service as provided under § 210.3(b) of this chapter and any month in which an employee is credited with compensation under § 211.12 of this chapter based on benefits paid under title VII of the Regional Rail Reorganization Act of 1973.

[53 FR 17182, May 16, 1988]

§ 210.3 Month of service.

(a) *Reported.* A reported month of service is any calendar month or any part of a calendar month for which an employee receives compensation for services performed for an employer; or receives pay for time lost as an employee; or is credited with compensation for a period of creditable military

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service; or is credited with compensation under §211.12 of this chapter based on benefits paid under title VII of the Regional Rail Reorganization Act of 1973.

(b) *Deemed.* A deemed month of service is any additional month of service credited to an employee subject to paragraphs (b)(1) and (2) of this section.

(1) An employee who is credited with less than twelve reported months of service for a calendar year after 1984 may be “deemed” to have performed service for compensation in additional months, not to exceed twelve, providing:

(i) The employee’s compensation for the calendar year in question exceeds an amount calculated by multiplying the number of reported months credited for that year by an amount equal

to one-twelfth of the current annual maximum for non-tier I components as defined in §211.15 of this chapter; and

(ii) The employee maintains an employment relation to one or more employers or serves as an employee representative in the month or months to be deemed. For purposes of this section, employment relation has the same meaning as defined in part 204 of this chapter, disregarding the restrictions involving the establishment of such a relationship as of August 29, 1935. Employee representative has the same meaning as defined in part 205 of this chapter.

(2) Employees satisfying the conditions in both paragraphs (b)(1)(i) and (b)(1)(ii) of this section shall have their months of service for a calendar year calculated using the following formula:

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

The quotient obtained using this formula equals the employee’s total months of service, reported and deemed, for the calendar year. Any fraction or remainder in the quotient is credited as an additional month of service.

(3) *Examples.* The provisions of paragraphs (b)(1) and (2) of this section may be illustrated by the following examples.

Example (1): Employee B worked in the railroad industry in 1985 and was credited with nine reported months of service (January through September) and non-tier I compensation of \$20,000. The 1985 annual maximum for non-tier I compensation is \$29,700. B maintained an employment relation in the three months he was not employed in 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

- (1) Enter the annual maximum for non-tier I compensation for the calendar year\$29,700
- (2) Divide line (1) by 12
\$29,700÷12\$2,475
- (3) Enter the employee’s reported months of service for the calendar year9
- (4) Multiply line (2) by line (3) \$2,475×9

-\$22,275
- (5) Enter the employee’s non-tier I compensation for the calendar year.....\$20,000
- (6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee’s excess non-tier I compensation for the calendar year.
\$20,000 – \$22,2750

a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.

b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.

Since the amount on line (6) is zero, employee B does not have enough non-tier I compensation to be credited with deemed months of service. B is credited with only nine reported months of service for the year.

Example (2): Assume the same facts as in example (1), except that employee B was credited with non-tier I compensation of \$25,000 for 1985. The following computations are necessary to determine if B has sufficient non-tier I compensation to be credited with deemed months of service.

- (1) Enter the annual maximum for non-tier I compensation for the calendar year\$29,700
- (2) Divide line (1) by 12

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\$29,700÷12	\$2,475
(3) Enter the employee's reported months of service for the calendar year	9
(4) Multiply line (2) by line (3) \$2,475×9	\$22,275
(5) Enter the employee's non-tier I compensation for the calendar year	\$25,000
(6) Subtract line (4) from line (5). Enter the result (but not less than zero). This is the employee's excess non-tier I compensation for the calendar year.	
\$25,000 – \$22,275	\$2,725

a. If line (6) is zero, the employee does not have sufficient non-tier I compensation to be credited with deemed months of service.

b. If line (6) is greater than zero, the employee has sufficient non-tier I compensation to be credited with deemed months of service.

Since the amount on line (6) is greater than zero, employee B has enough non-tier I compensation to be credited with deemed months of service. B now satisfies all the requirements for deeming, therefore his months of service for the calendar year are calculated using the formula in § 210.3(b)(2).

$$\text{Months of service} = \frac{\text{Employee's creditable non-tier I compensation}}{\text{Maximum annual creditable non-tier I compensation} \div 12}$$

$$(1) \text{ Months of service} = \frac{\$25,000}{\$29,700 \div 12} \text{ or } \$25,000 \div \$2,475$$

$$(2) \text{ Months of service} = \frac{\$25,000}{\$2,475} \text{ or } \$25,000 \div \$2,475$$

(3) Months of service = 25,000÷2,475 or 10.10

(4) Round the result in line (3) to the next higher whole number. This is the employee's total months of service for the calendar year.

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Employee B is credited with 11 months of service for 1985; nine reported months (January through September) and two deemed months (October and November).

[53 FR 17182, May 16, 1988]

§ 210.4 Year of service.

(a) A year of service is twelve months of reported or deemed service, consecutive or not consecutive. A fraction of a year of service is taken at its actual value.

(b) The term years of service means the total number of years an employee is credited with service as defined in § 210.2 of this part.

[49 FR 46731, Nov. 28, 1984, as amended at 53 FR 17183, May 16, 1988]

§ 210.5 Creditability of service.

(a) *Service before January 1, 1937.* (1) Service performed before January 1, 1937, is called prior service. Prior service is creditable under the Railroad Retirement Act if the employee had an employment relation with a railroad employer on August 29, 1935. Prior service may be combined with creditable service performed after December 31, 1936, to make the employee's total years of service equal, but not exceed, 30 years (360 months).

(2) An employee is considered to have an employment relation on August 29, 1935, if:

(i) The employee was on that date in active railroad service for an employer; or

(ii) The employee was on that date on a leave of absence expressly granted by the employer or the employer's authorized representative, but only if such leave of absence was established to the satisfaction of the Board before July 1947; or

(iii) The employee had 6 months of active railroad service for an employer during the period August 29, 1935, through December 31, 1945; or

(iv) The employee was not in the service of an employer by reason of a mental or physical disability from which the employee was continuously disabled until the employee attained age 65 or until August 1945; or

(v) The employee was not in the service of an employer by reason of a mental or physical disability from which the employee was continuously disabled until the employee attained age 65 or until August 1945; or